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April 22, 2016

BY HAND

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Igor Ovchinnikov v. Michael Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of Respondents' Motion for Consolidation.

Please contact me if you have any questions.

Sincerely,

Harini Kidambi

Enclosure

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET Al

v.

MICHAEL HITRINOV ET AL

RESPONDENTS' MOTION FOR CONSOLIDATION

Pursuant to FMC Rules 69 and 79, Specially-appearing Respondents Michael Hitrinov ("Hitrinov") and Empire United Lines, Co., Inc. ("EUL," collectively "Empire") move for consolidation of FMC Dockets 15-11(*Ovchinnikov v. Hitrinov*) and 1953(I) *(Nurgazinov v. Hitrinov)*[1]. The grounds for this motion, elaborated in the incorporated memorandum in support, are as follows:

1. Both Complaints are virtually identical, save for the Complainant(s) names and the identification of the car(s).
2. The issues in both cases are the same, as are the respondents, counsel on both sides, and the Presiding Officer.
3. Litigating the two matters separately would squander the resources of both the Parties and the Commission.

[1] Complainants have declined consent to this motion for unspecified reasons.

Memorandum in Support

A. Brief Background

As relevant here, the facts in both cases may be identically described as follows:

1. All of the Complainants bought used cars from the Kapustin Global Auto Group.
2. All of the cars for which Complainants make claims were transported by the Group to Finland pursuant to an arrangement between the Group and Empire.
3. All of the cars at issue were eventually liquidated by Empire when the Kapustin Global Auto Group failed to pay a debt for which the cars served as collateral.
4. Each of the Complainants has filed a Complaint against Empire, whether separately or with one of the other similarly-situated Complainants.
5. Both Complaints name the same Respondents, assert the precise same violations of law and make the exact same allegations of fact (other than identification of the specific car(s) involved and the alleged price/value of such cars).
6. Both Complaints were filed by the very same Counsel, are defended by the very same Counsel, and are pending before the very same Presiding Officer

B. Argument

FMC Rule 79[2] authorizes "the Presiding Officer to "order two or more proceedings which involve substantially the same issues consolidated and heard together."[3] See also FMC Rule, 1, 46 C.F.R. 502.1, which commands that the Rules "be construed to secure the just,

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[2] 46 C.F.R. § 502.79.

[3] The corresponding federal Rule, F.R.C.P. 42, likewise permits a district court to consolidate separate actions when they involve "a common question of law or fact" in order to encourage judges to arrange their dockets "so that the business of the court may be dispatched with expedition and economy." Wright & Miller, *Federal Practice and Procedure*, sec. 2383 at 427.

speedy, and inexpensive determination of every proceeding." Consolidating two cases where the parties and issues are substantially the same does just that – it provides for a speedier, less expensive, proceeding, with no disturbance to justice. As the Commission explained in *Saeid B. Maralan – Possible Violations of Section 8(A)(1), 10(B)(1), 19(A) and 23(A) of the Shipping Act of 1984*, 28 SRR 596 (ALJ 1998), the benefit of consolidation is that it promotes judicial economy while conserving the resources of both the forum and the parties.[4]

Although the two proceedings here are entirely congruent as to the facts and the legal issues, that is not a prerequisite for consolidation. In *Save On Shipping, Inc. v. Puerto Rico Maritime Shipping Authority*, 26 SRR 1455 (FMC 1994), for example, the Commission consolidated that docket (No. 92-12) with another complaint proceeding against the same respondents (*Hecht v. Puerto Rico Maritime Shipping Authority* (Docket 93-21)), because both raised similar questions regarding the validity of respondent's rule on attorney's fees, even though there was otherwise only a partial overlap of facts and issues. In so doing, the Commission explained:

> "It is within the discretion of an agency to consolidate proceedings before it when they involve a common question of law or fact. This may be done in response to a party's request or on the Commission's own motion. Here, we are satisfied that that the issue of attorney fees [in the two dockets] presents a common question of law, and the proceedings should be consolidated for decision. Consolidation may be appropriate even though the proceedings being consolidated present individual issues in addition to common issues. Consolidation will not deprive any party of any substantive rights that it would have possessed had the cases proceeded separately." Id. at 1456 (citations omitted).[5]

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[4] Judge Kline there denied consolidation in accordance with FMC policy identifying the significant differences between a private party complaint and a BOE enforcement action.

[5] As the FMC there recognized, the same principle is followed by the federal courts under Rule 42(a), so that consolidation may occur even if the two proceedings present some non-common fact and/or legal issues. See, e.g., *Batazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50 (5th Cir. 1981); *Central Motor Co. v. United States*, 583 F.2d 470 (10th Cir. 1978); *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492 (11th Cir. 1985); *NLRB v. S.E. Nichols. Inc.*, 862

(Footnote continued on next page)

The barely distinguishable Complaints in Dockets 15-11 and 1953(I) present a textbook case for consolidation. The two filings are virtually word-for-word identical (apart from Complainant name and specific car). They raise not only one common issue as in SOS, but rather precisely the same issues against precisely the same Respondents.[6]. Counsel on both sides are also the same, as is the Presiding Officer. It is difficult to imagine a more compelling case for consolidation.

The burden and waste of using dual tracks to litigate these two copycat proceedings has already become quite evident. The motions and responses to date, including this motion, have either been precise substantive duplicates, separated only by caption, or involve one filing simply incorporating the other by reference (as we do again today). And the Presiding Officer has been forced to issue virtually identical Orders in both proceedings, rather than simply one Order for both. Absent consolidation, the same wasteful duplication of effort will occur repeatedly, including in the forthcoming motions to dismiss, the Answers, and the responses to the Orders to Show Cause. Although Respondents firmly believe that both Complaints will soon be dismissed on various grounds, the repercussions if they should happen to carry on as separate cases are enormous. It is hard to fathom how two proceedings involving the same respondents, the same counsel, and the same issues, pending before the same Presiding Officer, could rationally require duplicate discovery, duplicate hearings with duplicate presentations of evidence, and duplicate decisions.

F.2d 952 (2nd Cir. 1988); *Katz v. Realty Equities Corp.*, 521 F.2d 1354 (2nd Cir. 1975); *West Central Missouri Rural Development Corp. v. Phillips*, 368 F. Supp. 567 (D.D.C. 1973).

[6] Both complaints allege violations of 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, 41106, and the FMC regulations at 46 C.F.R. Part 515.

Nor would consolidation deprive any party of any substantive rights they would have possessed had the cases proceeded separately.[7] As shown by the existing filings, both sides may make the exact same points by a single filing in a consolidated case as they may by repetitive filings in separate cases.[8] The only difference Respondents can see is that dual proceedings generate larger fees for the attorneys involved.[9]

Conclusion

For the foregoing reasons, Respondents respectfully request the Presiding Officer to grant their motion to consolidate FMC Dockets 15-11 and 1953(I).

Respectfully submitted,

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[7] *Katz, supra n.5,* at 1354 (2d Cir. 1975).

[8] That one proceeding is on an informal track and the other a formal track at the FMC is no point against consolidation. See, e.g., *Total Fitness Equipment Inc. v. Worldlink Logistics, Inc.* , 28 SRR 534 (FMC 1998) (consolidating a Special Docket proceeding with a Formal Docket proceeding); SOS, supra (consolidating a proceeding before an Administrative Law Judge with a proceeding before the Commission). In any event, Respondents in their Answers will deny consent to the proposed informal treatment in Docket No. 1953(I), and so it will become a formal docket.

[9] To the extent that there are trivial differences between the Complaints, these can be easily addressed by minor adjustments in the Parties' filings. Indeed, in seeking Complainants' consent to this obvious motion Counsel for Respondents expressly offered to cooperate with Counsel for Complainants in addressing any such issues.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document via electronic and first-class mail to the following:

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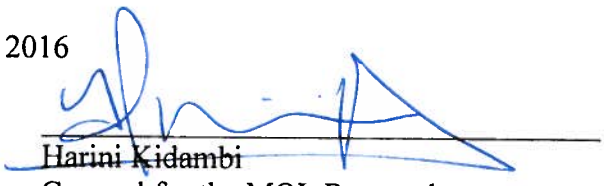
Dated at Washington, DC, this 22nd day of April, 2016



Harini Kidambi
Counsel for the MOL Respondents